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HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR,
DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS,

Complainant,

vs.

MASTER SHEET METAL, INC.,

Respondent.

) CASE NO. OSH 2007-2
) (Inspection No. 309458966)
)
) STIPULATION AND SETTLEMENT
) AGREEMENT; EXHIBIT A; APPROVAL
) AND ORDER
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STIPULATION AND SETTLEMENT AGREEMENT

Complainant Director of Labor and Industrial Relations ("Director") and Respondent MASTER SHEET METAL, INC. ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about July 5, 2006, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 94-321 Leonui Street, Waipahu, Hawaii, 96797.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on November 24, 2006 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$2,625.00. *See* Exhibit A.

Respondent timely contested the Citation.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at 94-321 Leonui Street, Waipahu, Hawaii, 96797.

3 At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. Respondent agrees that it has or will abate each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22. Respondent shall submit the completed abatement certification to HIOSH no later than thirty (30) days after the filing of the instant Agreement with the Director; failure to timely do so may result in additional penalties or follow up inspections.

5. The Citation is amended as follows:

a. citation 1, item 1a, alleging a violation of section 12-110-2(b)(2)(B), HAR, is withdrawn;

b. citation 1, item 1c, alleging a violation of section 12-110-2(b)(4)(C), HAR, is withdrawn;

c. citation 1, item 2b, alleging a violation of 29 CFR 1926.451(f)(3), is
withdrawn;

d. citation 1, item 2c, alleging a violation of 29 CFR 1926.454(c)(3), is
withdrawn;

e. citation 1, item 3a, alleging a violation of 29 CFR 1926.501(b)(11), is
withdrawn;

f. citation 1, item 3b, alleging a violation of 29 CFR 1926.502(d)(15), is
withdrawn;

g. citation 1, item 3c, alleging a violation of 29 CFR 1926.503(c)(3), is
withdrawn;

6. The Director reduces the aggregate penalty from \$2,625 to \$1,750.00,
which shall be paid in full to the Director of Budget and Finance upon the execution of this
Agreement.

7. Respondent shall perform each of the following:
- a. Respondent shall reapply for membership in the SHARP program.
 - b. Respondent shall submit a complete application for membership in the VPP program by the end of the 2007 calendar year with the goal of being accepted into the program by June 2008 (upon the condition that Respondent meets all of the program's membership requirements and conditions). The acceptance into the VPP program can be extended for good reason.
 - c. Respondent will continue its partnership with the Department of Labor and Industrial Relations on its Fall Protection Initiative.
 - d. All of Respondent's employees shall complete the OSHA 10-hour Construction Outreach program before the end of the year 2007.
 - e. Respondent will revise its company safety program, disciplinary program, recognition program and training program within sixty (60) days of this Agreement.
 - f. Within sixty (60) days of this Agreement Respondent will contract with a third-party safety consultant to conduct verification inspections of all of its worksites to ensure participation and compliance with the company's safety program.
 - g. Failure to timely complete any of the conditions listed in subparagraphs a through f above would be a violation of the settlement agreement and the Director, through HIOSH, will have the authority to void the settlement

agreement and reinstate the original citation of November 24, 2006 and the original penalty of \$2,625.00 to be due and owing, except that failure to qualify for the VPP program (subparagraph b) for reasons beyond Respondent's control will not be grounds for voiding the settlement.

8. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and Order and the Citation, as amended, shall become a final order of the Director.


9. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

10. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

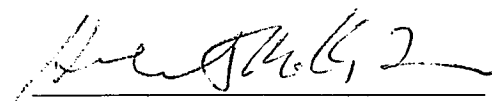
11. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, July 12, 2007.

MASTER SHEET METAL, INC.

By: 
Its President

APPROVED AS TO FORM:


HERBERT B.K. LAU
Deputy Attorney General
Attorney for Director of Labor and
Industrial Relations, State of Hawaii

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS


NELSON B. BEFITEL

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:


ORDER NO. 250



JAMES B. NICHOLSON, Chair



EMORY J. SPRINGER, Member



SARAH R. HIRAKAMI, Member

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7003 1680 0000 9997 3189

Citation and Notification of Penalty

To:
Master Sheet Metal Inc
and its successors
1648 Auiki St
Honolulu, HI 96819

Inspection Number: 309458966 (Hervie Messier)
Inspection Date(s): 07/05/2006 - 10/06/2006
Issuance Date: 11/24/2006
OSHSO ID: U5995
Optional Report No.: 09306
Inspection Type: Fatality/Catastrophe
Scope of Inspection: Partial Inspection

Inspection Site:
94-321 Leonui St
Waipahu, HI 96797

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents **must** contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 11/24/2006. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309458966
Inspection Dates: 07/05/2006 - 10/06/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 11/24/2006

Citation and Notification of Penalty

Company Name: Master Sheet Metal Inc
Inspection Site: 94-321 Leonui St, Waipahu, HI 96797

The alleged violations below (1a-1c) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 1 Item 1a Type of Violation: **Serious**

HAR §12-110-2(b)(2)(B) was violated because:

The company's disciplinary system is not being enforced as outlined in its safety and health program. The lack of enforcement indicates that corrective action is not taken seriously by the company. This lack of enforcement, to correct unsafe working practices, exposed the employees to injuries from falls due to their not using fall protection. One employee was seriously injured in a fall.

§12-110-2(b)(2)(B) states "The employer shall ensure that practices are understood by the employees and are underscored through training, positive reinforcement, correction of unsafe performance, and, if necessary, through a clearly defined and communicated disciplinary system."

Location: Work site

Date By Which Violation Must be Abated:
Penalty:

12/27/2006
\$875.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309458966
Inspection Dates: 07/05/2006 - 10/06/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 11/24/2006

Citation and Notification of Penalty

Company Name: Master Sheet Metal Inc
Inspection Site: 94-321 Leonui St, Waipahu, HI 96797

Citation 1 Item 1b Type of Violation: Serious

HAR §12-110-2(b)(3) was violated because:

No inspections were conducted of the work site which would have detected and corrected the unsafe work practice of working on the 17 feet high roof without fall protection. The lack of inspection and corrective action exposed the employees to injuries from fall due to lack of fall protection. One employee was seriously injured in a fall.

§12-110-2(b)(3) states "The employer shall conduct periodic in-house safety and health inspections so that new or previously missed hazards or failures in engineering, work practice, and administrative controls are identified. The in-house inspections will be conducted by individuals who are trained to recognize hazardous conditions, as members of the safety and health committee or a person designated and trained by the employer for the facility's safety and health program."

Location: Work site

Date By Which Violation Must be Abated:

12/27/2006

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309458966
Inspection Dates: 07/05/2006 - 10/06/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 11/24/2006

Citation and Notification of Penalty

Company Name: Master Sheet Metal Inc
Inspection Site: 94-321 Leonui St, Waipahu, HI 96797

Citation 1 Item 1c Type of Violation: **Serious**

HAR §12-110-2(b)(4)(C) was violated because:

The leadman/working foreman had not been trained to recognize hazards, maintain safety in the work area, or reinforce training on the nature of potential hazards for the other employees. He also engaged, along with the other workers, in the hazardous practice of working on the 17 feet high roof without fall protection. The lack of training and his engagement in unsafe practices encouraged the other workers to do the same thus exposing them to injuries from fall due to lack of fall protection. One employee was seriously injured in a fall.

§12-110-2(b)(4)(C) states "The employer shall ensure that the supervisors and managers understand their responsibilities under the safety and health program and their importance to the safety and health of the workplace. In particular, the training for managers and supervisors shall enable them to:

- (i) Recognize potential hazards;
- (ii) Maintain safety and health protection in the work area; and
- (iii) Reinforce employee training on the nature of the potential hazards and required protective measures."

Location: Work site

Date By Which Violation Must be Abated:

12/27/2006

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309458966
Inspection Dates: 07/05/2006 - 10/06/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 11/24/2006

Citation and Notification of Penalty

Company Name: Master Sheet Metal Inc
Inspection Site: 94-321 Leonui St, Waipahu, HI 96797

The alleged violations below (2a-2c) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 1 Item 2a Type of Violation: **Serious**

29 CFR 1926.451(e)(1) [Refer to chapter 12-130.1, HAR] was violated because:

The workers were using a Genie GS-1530 scissor lift, to gain access to the 17 feet high roof edge by climbing over the lift's guardrail onto the roof. This activity exposes the employees to injury from falls while climbing out of the unit and the possibility of the unit tipping over.

29 CFR 1926.451(e)(1) states "When scaffold platforms are more than 2 feet (0.6m) above or below a point of access, portable ladders, hook-on ladders, attachable ladders, stair towers (scaffold stairway/towers), stairway-type ladders (such as ladder stands), ramps, walkways, integral prefabricated scaffold access, or direct access from another scaffold, structure, personnel hoist, or similar surface shall be used. Cross braces shall not be used as a means of access."

Location: Work site

Date By Which Violation Must be Abated:
Penalty:

11/28/2006
\$875.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309458966
Inspection Dates: 07/05/2006 - 10/06/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 11/24/2006

Citation and Notification of Penalty

Company Name: Master Sheet Metal Inc
Inspection Site: 94-321 Leonui St, Waipahu, HI 96797

Citation 1 Item 2b Type of Violation: **Serious**

29 CFR 1926.451(f)(3) [Refer to chapter 12-130.1, HAR] was violated because:

The Genie GS-1530 scissor lift, used to gain access to the 17 feet high roof edge, was not inspected each day by a competent person before each shift. This activity exposes the employees to injury from falls due to potential lift malfunctions.

29 CFR 1926.451(f)(3) states "Scaffolds and scaffold components shall be inspected for visible defects by a competent person before each work shift, and after any occurrence which could affect a scaffold's structural integrity."

Location: Work site

Date By Which Violation Must be Abated: 11/28/2006

Citation 1 Item 2c Type of Violation: **Serious**

29 CFR 1926.454(c)(3) [Refer to chapter 12-130.1, HAR] was violated because:

The workers were using a Genie GS-1530 scissor lift, to gain access to the 17 feet high roof edge by climbing over the lift's guardrail onto the roof. This unsafe activity exposes the employees to injury from falls while climbing out of the unit and also the possibility of the unit tipping over. These actions indicate a need for retraining of these workers.

29 CFR 1926.454(c)(3) states "Where inadequacies in an affected employee's work involving scaffolds indicate that the employee has not retained the requisite proficiency."

Location: Work site

Date By Which Violation Must be Abated: 12/27/2006

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309458966
Inspection Dates: 07/05/2006 - 10/06/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 11/24/2006

Citation and Notification of Penalty

Company Name: Master Sheet Metal Inc
Inspection Site: 94-321 Leonui St, Waipahu, HI 96797

The alleged violations below (3a-3c) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 1 Item 3a Type of Violation: Serious

29 CFR 1926.501(b)(11) [Refer to chapter 12-121.2, HAR] was violated because:

The workers on the steep pitched roof were not wearing personal fall protection. Nor were they protected by guardrail systems with toe-boards, or safety net systems. This lack of protection exposed the employees to injury from falls. One employee has been injured in a fall on this site.

29 CFR 1926.501(b)(11) states "Each employee on a steep roof with unprotected edges 6 feet (1.8m) above lower levels shall be protected from falling by guardrail systems with toe-boards, safety net systems, or personal fall arrest systems."

Location: Work site

Date By Which Violation Must be Abated:
Penalty:

11/28/2006
\$875.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309458966
Inspection Dates: 07/05/2006 - 10/06/2006



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 11/24/2006

Citation and Notification of Penalty

Company Name: Master Sheet Metal Inc
Inspection Site: 94-321 Leonui St, Waipahu, HI 96797

Citation 1 Item 3b Type of Violation: **Serious**

29 CFR 1926.502(d)(15) [Refer to chapter 12-121.2, HAR] was violated:

The anchorage points, selected by the company's superintendent, were to be on angle irons showing rust and corrosion. The selection of these points was made from ground level, 17 to 25 feet below, and the capability of these points to support 5,000 pounds was not verified by close examination. This activity exposes the employees to injury from falls. One employee has been injured in a fall on this site.

29 CFR 1926.502(d)(15) states "Anchorages used for attachment of personal fall arrest equipment shall be independent of any anchorage being used to support or suspend platforms and capable of supporting at least 5,000 pounds (22.2 kN) per person attached..."

Location: Work site

Date By Which Violation Must be Abated:

11/28/2006

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309458966
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830 Punchbowl Street, Room 425
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Issuance Date: 11/24/2006

Citation and Notification of Penalty

Company Name: Master Sheet Metal Inc
Inspection Site: 94-321 Leonui St, Waipahu, HI 96797

Citation 1 Item 3c Type of Violation: **Serious**

29 CFR 1926.503(c)(3) [Refer to chapter 12-121.2, HAR] was violated because:

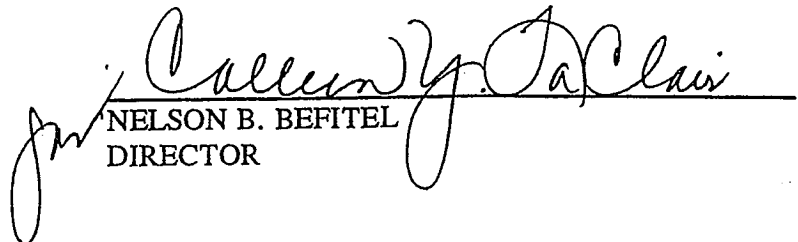
The workers were not using fall protection on the steep pitched roof with a ground to eave height of 17 feet. This unsafe activity exposes the employees to injury from falls. This activity is an indication that these employees are in need of retraining.

29 CFR 1926.503(c)(3) states "Inadequacies in an affected employee's knowledge or use of fall protection systems or equipment indicate that the employee has not retained the requisite understanding or skill."

Location: Work site

Date By Which Violation Must be Abated:

12/27/2006


NELSON B. BEFITEL
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.